

OFFICE OF INFORMATION PRACTICES

ANNUAL REPORT 2007

This report to the Governor and the Legislature summarizes the activities and findings of the Office of Information Practices in the administration of the public records law, the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes, and the open meetings law, part I of chapter 92, Hawaii Revised Statutes, from July 1, 2006 to June 30, 2007.

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Executive Summary

The Office of Information Practices (“OIP”) was created by the legislature of the State of Hawaii (the “Legislature”) in 1988 to administer Hawaii’s new public records law, the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (“HRS”) (the “UIPA”), which took effect on July 1, 1989. The UIPA applies to all state and county agencies with the exception of the judiciary in the performance of its nonadministrative functions.

Under the UIPA, all government records are public and must be made available for inspection and copying unless an exception provided for in the UIPA authorizes an agency to withhold the records from disclosure. Recognizing that “[t]he policy of conducting governmental business as openly as possible must be tempered by a recognition of the right of the people to privacy, as embodied in . . . the Constitution of the State of Hawaii[.]” the Legislature created one exception to disclosure that balances an individual’s privacy interest against the public’s right to open government.

In 1998, OIP was given the additional responsibility of administering the open meetings law, part I of chapter 92, HRS (the “Sunshine Law”). The Sunshine Law requires state and county boards to conduct their business as openly as possible in order to open up the governmental processes to public scrutiny and participation.

The law thus requires that, unless a specific statutory exception is provided, the discussions, deliberations, decisions and actions of government boards must be conducted in a meeting open to the public, with public notice and with the opportunity for the public to present testimony.

Enforcement

OIP is intended to be an alternative means for the public to appeal an agency’s denial of access to records. When OIP determines that a record must be disclosed, the UIPA specifically provides that the agency “shall make the record available” to the requester. In FY 2007, OIP received 30 appeals from the public.

In administering the Sunshine Law, OIP receives and resolves complaints regarding possible violations by state and county boards of the open meetings provisions. In FY 2007, OIP opened 23 new investigations.

OIP also monitors litigation in the courts that involve issues concerning the UIPA or the Sunshine Law and may intervene in those cases involving the UIPA. In FY 2007, OIP tracked 1 new lawsuit and continued to monitor or participate in 5 ongoing cases involving UIPA issues.

Implementation

OIP provides guidance and assistance to the public and government entities by a variety of means. In the past fiscal year, OIP received over 1,100 inquiries and requests from the public, government agencies and government boards. The majority of those requests were handled through OIP’s Attorney-of-the-Day service, a program that allows the public and government entities to receive immediate guidance on both UIPA and Sunshine Law issues. Of the inquiries and requests received during FY 2007, about

one-third (332) involved Sunshine Law issues, with the remaining inquiries and requests relating to the UIPA.

OIP is directed by statute to receive and make publicly available reports of records that are to be maintained by all agencies. These reports are maintained on the Records Report System ("RRS"), which was converted from a Wang computer-based system to an Internet-based system in FY 2003. Since FY 2004, OIP has assisted agencies in updating their records reports and has made public access to the RRS available through its website.

OIP also developed new materials to facilitate data entry by the agencies and a guide to be used by both the public and agencies to locate records, to retrieve information, and to generate reports from the RRS. All of these materials are posted on OIP's website for easy access by agencies and the public. To date, state and county agencies have reported over 30,000 records on the RRS.

Education

OIP continues to make presentations and provide training on the UIPA and the Sunshine Law as part of its mission to educate government agencies and boards regarding the open government laws and to assist them in complying with those laws.

In FY 2007, OIP continued its educational efforts, responding to requests for training by providing 12 UIPA training sessions and 21 Sunshine Law training sessions. Attendees to all training sessions are informed of and encouraged to use the resources provided by OIP.

In FY 2007, OIP produced its traditional print publications, including the *Openline* newsletter and educational guides. OIP continued to expand its website launched in April 1998, which provides a major source of information and guidance in an economical and easily accessible format.

Budget

OIP's largest budget year was FY 1994, when the annual budget was \$827,537, funding a staff of 15 positions. In FY 1998, the Legislature sharply reduced OIP's budget and eliminated three positions. From FY 1999 to FY 2005, OIP's annual budget was approximately \$350,000 per year. For FY 2006 and FY 2007, OIP's budget has been approximately \$400,000. See **Figure 1** below.

In FY 2007, OIP functioned with 7.5 filled positions. This included the director, two full-time staff attorneys, two part-time staff attorneys, and three staff members.

OIP continues to look at ways to best utilize its limited resources to provide effective and timely assistance to the public and to government agencies and boards.

During FY 2007, OIP had personnel costs of \$371,474 and operational costs of \$35,220 for a total allocation of \$406,694. See **Figure 2** on page 4.

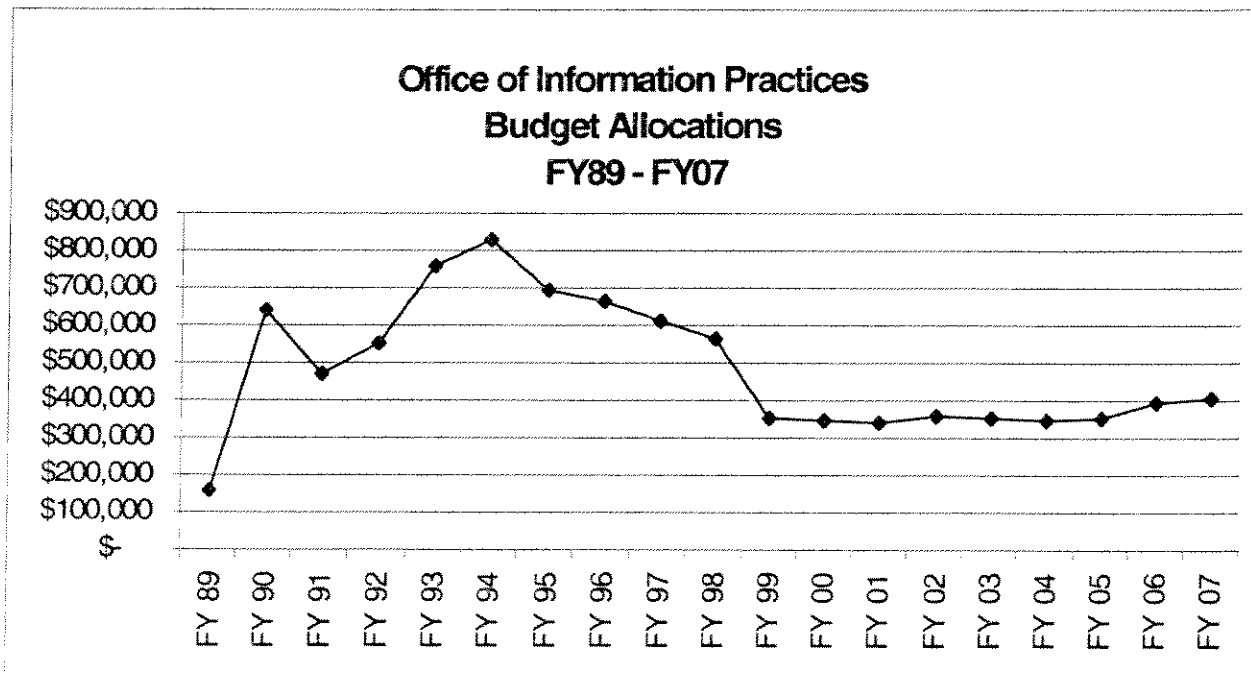


Figure 1

Office of Information Practices
Budget FY 1989 to FY 2007

Fiscal Year	Operational Costs	Personnel Costs	Allocations	Approved Positions
FY 07	35,220	371,474	406,694	8
FY 06	35,220	360,266	395,486	8
FY 05	35,220	314,995	350,215	8
FY 04	35,220	312,483	347,703	8
FY 03	38,179	312,483	350,662	8
FY 02	38,179	320,278	358,457	8
FY 01	38,179	302,735	340,914	8
FY 00	37,991	308,736	346,727	8
FY 99	45,768	308,736	354,504	8
FY 98	119,214	446,856	566,070	8
FY 97	154,424	458,882	613,306	11
FY 96	171,524	492,882	664,406	12
FY 95	171,524	520,020	692,544	15
FY 94	249,024	578,513	827,537	15
FY 93	248,934	510,060	758,994	15
FY 92	167,964	385,338	553,302	10
FY 91	169,685	302,080	471,765	10
FY 90	417,057	226,575	643,632	10
FY 89	70,000	86,000	156,000	4

Figure 2

Highlights of Fiscal Year 2007

Enforcement

Investigations of Government Agencies

OIP opened 23 investigations into the actions of government boards in FY 2007 following complaints made by members of the public or on OIP's initiative.

The following is a summary of some of the investigations completed in FY 2007.

Executive Meeting Minutes

OIP was asked to investigate whether the Office of Hawaiian Affairs ("OHA") properly responded to a records request under the UIPA for the minutes of an executive session of the OHA Board. Because OHA's response did explain the legal authority for its denial – that the redacted portions constituted protected legal advice – and did cite to the Sunshine Law basis for withholding minutes of an executive session, OHA's response did minimally meet the requirements. However, to avoid confusion in the future, OIP recommended that OHA cite the UIPA exception on which it relies as well as explaining the basis for its denial and citing to other relevant laws.

Emergency Board Meeting

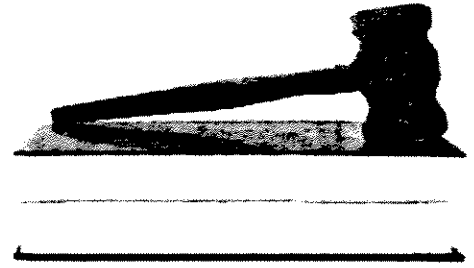
OIP was asked to investigate whether the Kauai County Council (the "Council") properly followed the requirements to convene an emergency meeting under the Sunshine Law. To convene such a meeting, the statute expressly requires two-thirds of the Council's members to agree to the necessity of and reasons for the emergency meeting before the meeting was convened, and to give notice to the public of that agreement by

filing the Council's adopted written findings with the meeting agenda.

OIP determined that the Council did not meet the technical requirements to convene the Emergency Meeting because it voted to "receive," among other things, the Mayor's Emergency Declaration and the Governor's Supplementary Proclamation to justify the meeting during the meeting, rather than incorporating them into its agreement before the meeting and because two-thirds of the Council members did not agree before the meeting to the existence of an emergency.

Meeting Agenda

A member of the public asked for an investigation into whether the Maui General Plan Advisory Committee (the "Committee") properly noticed certain issues considered at its meeting under the Sunshine Law. Specifically, the requester questioned whether the agenda filed for the meeting provided sufficient notice for the Committee's discussion and actions taken. Although finding the listing of the disputed items under the heading "Orientation Workshop" to be somewhat misleading, OIP concluded that the meeting agenda did provide sufficient notice to allow the Committee's discussions and actions taken on the disputed items. OIP further concluded that the agenda provided sufficient detail of the subject matter of the disputed items to allow interested persons to reasonably determine what the Committee intended to consider, and to decide whether to attend and participate in the meeting.



Records Request Response

The Society of Professional Journalists (SPJ) asked OIP to review responses from agencies to various records requests to determine whether they were proper under the UIPA. SPJ had received different agency responses ranging from flat denials without explanation or legal citations, to non-responses, to denials with appropriate legal citations and lengthy explanations.

OIP's review found that although most agencies provided a written response within the 10 business day timeframe provided by rule, two agencies responded over a month late and four more agencies completely failed to respond. Additionally the majority of agencies that did respond failed to cite to the legal authority for their denials.

Sufficiency of Agenda

OIP questioned whether an item on the Hawaii State Committee of Blind Vendors meeting agenda listed as "Subcommittee Reports," without any further description or detail, provided the requisite notice under the Sunshine Law to allow the Committee's legislative subcommittee to present proposed changes to the Hawaii Administrative Rules ("HAR") relating to services for the blind and visually handicapped. OIP found that the agenda alone was insufficient to allow meaningful public notice and participation on that item and did violate the Sunshine Law. OIP instructed that on future agendas, the Committee must include more specific information about the reports it intends to consider, including the name of the subcommittee and the subject of the report.

Ongoing Permitted Interaction Group

The Pearl City Neighborhood Board (PCNB) adopted a resolution assigning permitted interaction groups to attend meeting of other boards and organizations on an ongoing basis. Because the groups apparently were formed to allow members to attend meetings rather than to investigate a specific matter of business, OIP found that the groups were more accurately characterized as standing committees of PCNB that must comply with the Sunshine Law.

Litigation Report

OIP monitors litigation that raises issues under both the UIPA and the Sunshine Law.

Under the UIPA, a person may bring an action for relief in the circuit courts if an agency denies access to records or fails to comply with the provisions of the UIPA governing personal records. A person filing suit must notify OIP at the time of filing. OIP has standing to appear in an action in which the provisions of the UIPA have been called into question.

The following summarizes some of the cases that OIP was a party to or monitored in FY 2007.

❖ **New Case:**

Access to Police Report

Michael Harris v. DOE Dog Owner et al., Civ No. 07-1-0353-02 (Circuit Court of the First Circuit). In this suit, Plaintiff raised, among others, a claim against the City and County of Honolulu, the Honolulu Police Department ("HPD") and Boisse Correa, as chief of HPD, for failure to provide access under the UIPA to an unredacted copy of a police report concerning Plaintiff as the victim of a dog attack. This case is pending.

❖ *Continuing Cases:*

Status of Cable Access Providers

'Olelo: The Corporation for Community Television, the public, educational, and government access provider for the island of Oahu, sued OIP in August 2004 for a declaratory judgment that 'Olelo was not an "agency" for the purposes of the UIPA as OIP had found in Opinion Letter Number 02-08. In an order filed June 30, 2005, the First Circuit Court, applying a de novo standard of review, granted summary judgment, finding that 'Olelo was not an "agency" for purposes of the UIPA. OIP appealed that decision.

The parties have completed all briefing in the appeal, which focuses on the standard of review used by the court and the test used by the court to determine when a corporation is "owned, operated, or managed by or on behalf of this State. . ." as this language is used in the UIPA's definition of an agency. No decision has yet been issued.

Serial One-on-One Communication

Right to Know Committee, et al., v. City Council, City and County of Honolulu, et al., Civil No. 05-1-1760-10 EEH (Circuit Court of the First Circuit). A number of public interest groups sued the City Council seeking a declaration that the Sunshine Law does not allow members of the Council to consider Council business through a series of private one-on-one discussions. The lawsuit was filed after Council members expressed their disagreement with OIP's opinion that the permitted interaction that allows two Council members to privately discuss Council business with each other cannot be used serially, and expressed their intent to continue privately discussing Council business through such

serial one-on-one meetings. The State of Hawaii was allowed to intervene in the lawsuit.

After considering and rejecting the Council's argument, the circuit court granted plaintiffs' motion for summary judgment, expressly finding that the Sunshine Law does not permit Council members to engage in serial one-on-one discussions about Council business unless such discussion is permitted by another provision of the statute. The Council appealed the circuit court's decision. The State of Hawaii is not a party to the appeal.

The Intermediate Court of Appeals has held oral argument on this appeal. The court's decision is pending.

Access to Personal Records

In the case of *Crane v. State of Hawaii*, Civ. No. 03-1-1699-08 (Circuit Court of the First Circuit), plaintiff alleged that the State knowingly and intentionally failed to provide him access to his time served credit sheet and to respond to his request to make corrections to that record as required by sections 92F-23 and -24, HRS. Plaintiff seeks an order compelling release and change of records, monetary damages and costs. This case was dismissed for failure to appear.

Access to Council Minutes

Kauai County, et al. v. Office of Information Practices, et al., Civ. No. 05-1-0088 (Circuit Court of the Fifth Circuit). In 2005, the County of Kauai and the Kauai County Council filed a lawsuit against OIP seeking declaratory relief to invalidate OIP's decision that portions of the minutes of a Council executive meeting must be disclosed.

OIP previously found that the majority of the matters actually considered by the Council during the meeting did not fall within the executive meeting purpose cited on the Council's agenda (or any other executive meeting purpose). For that reason, OIP determined that those portions of the minutes must be disclosed.

Both parties have filed motions for summary judgment upon which the court intends to rule by the end of this calendar year. By this suit, plaintiffs seek judicial review of OIP's ruling to disclose the minutes. OIP contends that the court does not have jurisdiction to hear this case because the UIPA does not provide government agencies the right to bring suit to challenge a ruling by OIP that a record must be disclosed under the UIPA.

Access to Human Services Records

In the case of *Carl Foytik v. Department of Human Services*, Civ. No. 00-1-2059 (Circuit Court of the First Circuit), Sup. Ct. No. 24052, the plaintiff challenged the Department of Human Services' redaction of certain records provided in response to his UIPA request. The First Circuit Court dismissed the case, holding that the claim was moot on the grounds that the records had been given to him, without reaching the issue of whether the redaction was proper.

The Hawaii Supreme Court issued an unpublished summary disposition order holding that the First Circuit Court erred in ruling that the matter was moot and in failing to address all the plaintiff's claims for relief. Specifically, the Court held that the challenged redaction was a denial of access to a government record, which should have been addressed by the First Circuit Court. The lawsuit remains pending.

Implementation

Legal Assistance

Each year, OIP receives numerous requests for assistance from members of the public, government employees, and government officials and board members.

In FY 2007, OIP received over 1,100 requests for assistance, including requests for general advice and guidance regarding application of and compliance with the UIPA and Sunshine Law; requests for assistance in obtaining records from government agencies; requests for investigations of actions and policies of agencies and boards for violations of the Sunshine Law, the UIPA, or OIP's administrative rules; requests for information and forms; and requests for advisory opinions regarding the rights of individuals or the functions and responsibilities of agencies and boards under the UIPA and the Sunshine Law.

Attorney of the Day Service – Timely Legal Advice

A majority of the requests for assistance are handled through OIP's Attorney of the Day ("AOD") service. Over the past eight years, OIP has received a total of

6,235 requests through its AOD service. See **Figure 3.**



The AOD service allows the public, agencies and boards to receive general legal advice from an OIP staff attorney, usually within that same day. AOD requests are received by telephone, facsimile, e-mail, or in person.

Members of the public use the service frequently to determine whether agencies are properly responding to record requests or to determine if government boards are following the procedures required by the Sunshine Law.

Agencies often use the service to assist them in responding to record requests, in particular when addressing issues such as whether the agency has the discretion to redact information based upon privacy concerns. Boards also frequently use the service to assist them in navigating Sunshine Law requirements.

Where the issues involved are factually or legally complex, where mediation by OIP between the public and the agency or board is required, or where more specific advice or a more formal response is desired, requesters are instructed to submit a written request and a case file is opened.

AOD Requests

Fiscal Year	Total	Public	Government Agencies
FY 07	772	201	571
FY 06	720	222	498
FY 05	711	269	442
FY 04	824	320	504
FY 03	808	371	437
FY 02	696	306	390
FY 01	830	469	361
FY 00	874	424	450

Figure 3

In FY 2007, OIP received 772 inquiries through its AOD service. Of the 772 AOD inquiries received in FY 2007, 201 requests (26%) came from the public and 571 (74%) came from government boards and agencies. See **Figure 4**.

Of the 201 public requests, 125 (62.2%) came from private individuals, 32 (15.9%) from media, 15 (7.5%) from public interest groups, 15 (7.5%) from private attorneys, 3 (1.5%) from businesses, 8 (4%) from neighborhood boards, and 3 (1.5%) came from other sources. See **Figure 5** and **Figure 6**.

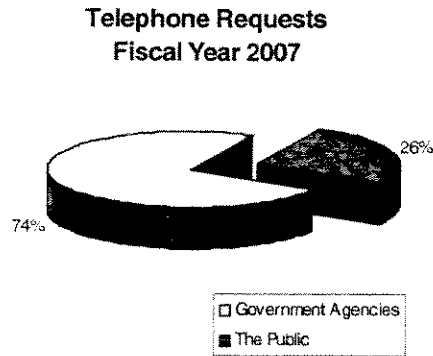


Figure 4

**AOD Requests from the
Public FY 2007**

Types of Callers	Number of Inquiries
Private Individual	125
Media	32
Public Interest Group	15
Other	3
Private Attorney	15
Business	3
Neighborhood Boards	8
TOTAL	201

Figure 5

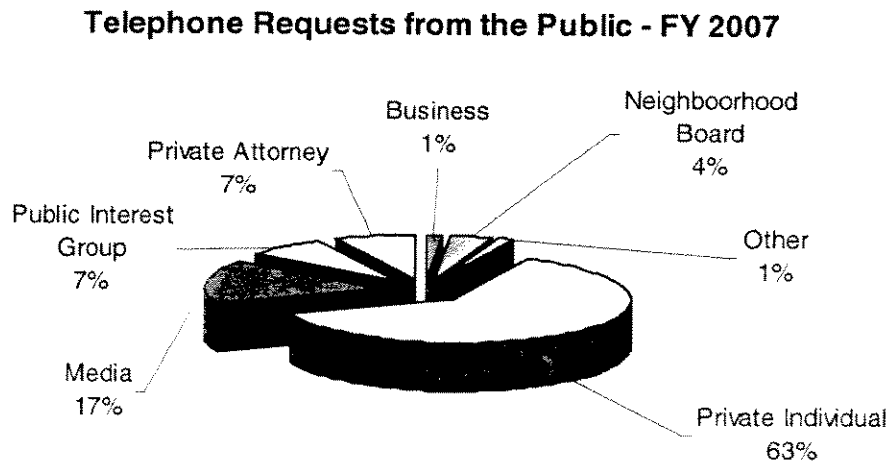


Figure 6

State Agencies

In FY 2007, OIP received a total of 293 AOD inquiries about specific state agencies. Over half of these requests concerned six state agencies: the Department of Land and Natural Resources (46), the Department of Health (35), the Department of Commerce and Consumer Affairs (30), the Department of Education (23), the University of Hawaii System, and Tourism (22), and the Department of Accounting and General Services (18).

OIP also received 20 inquiries concerning the legislative branch and 6 inquiries concerning the judicial branch. These numbers reflect calls both from the public and from the agencies themselves. See **Figure 7** on page 14.

**Calls to OIP About
State Government Agencies
FY 2007**

Executive Branch Department	Requests
Land and Natural Resources	46
Health	35
Commerce and Consumer Affairs	30
Education (including public libraries)	23
University of Hawaii System	22
Accounting and General Services	18
Lieutenant Governor (including OIP)	16
Transportation	16
Labor and Industrial Relations	15
Business, Economic Development, and Tourism	13
Public Safety	9
Human Services	9
Agriculture	9
Attorney General	7
Governor	6
Hawaiian Home Lands	6
Human Resources Development	4
Budget and Finance	4
Office of Hawaiian Affairs	3
Tax	2
TOTAL EXECUTIVE	293
TOTAL LEGISLATURE	20
TOTAL JUDICIARY	6
TOTAL STATE AGENCIES	319

Figure 7

County Agencies

OIP received 134 AOD inquiries regarding county agencies and boards. Nearly a third of these inquiries (44) concerned agencies in the City and County of Honolulu. Of these, the largest number of inquiries (14) concerned the Neighborhood Commission and Neighborhood Boards.

OIP received 90 inquiries regarding neighbor island agencies and boards: Hawaii County (38), Kauai County (26), and Maui County (26). See **Figures 8-11**.

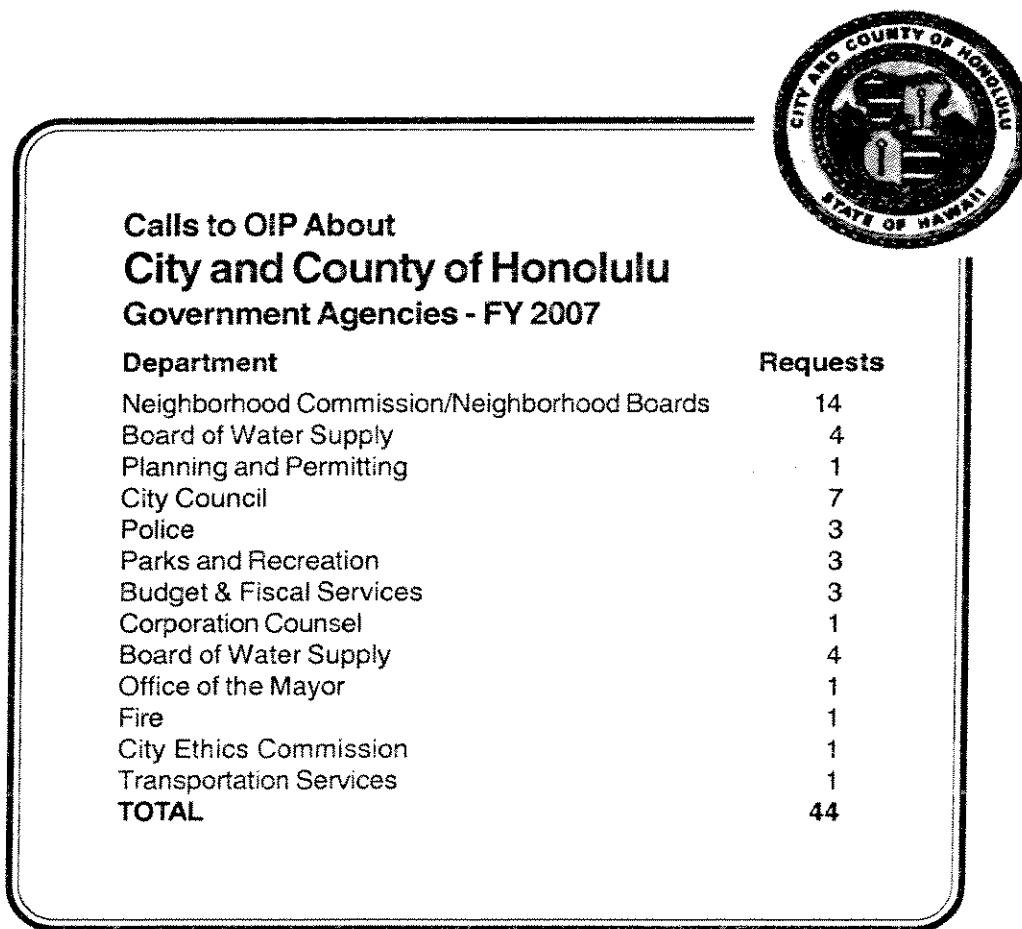


Figure 8

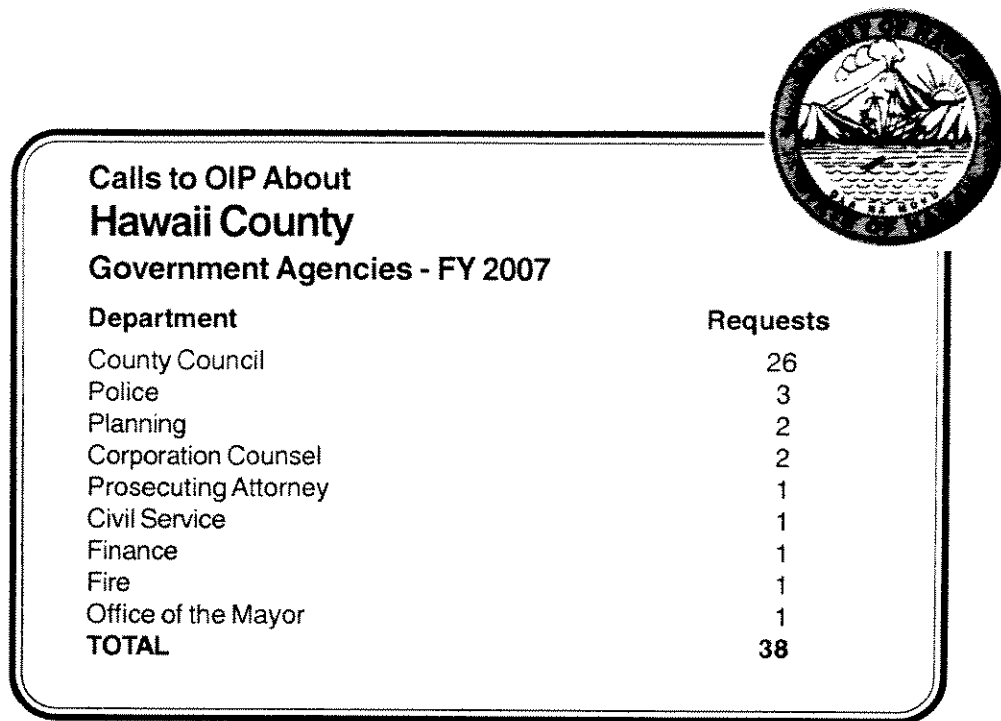


Figure 9

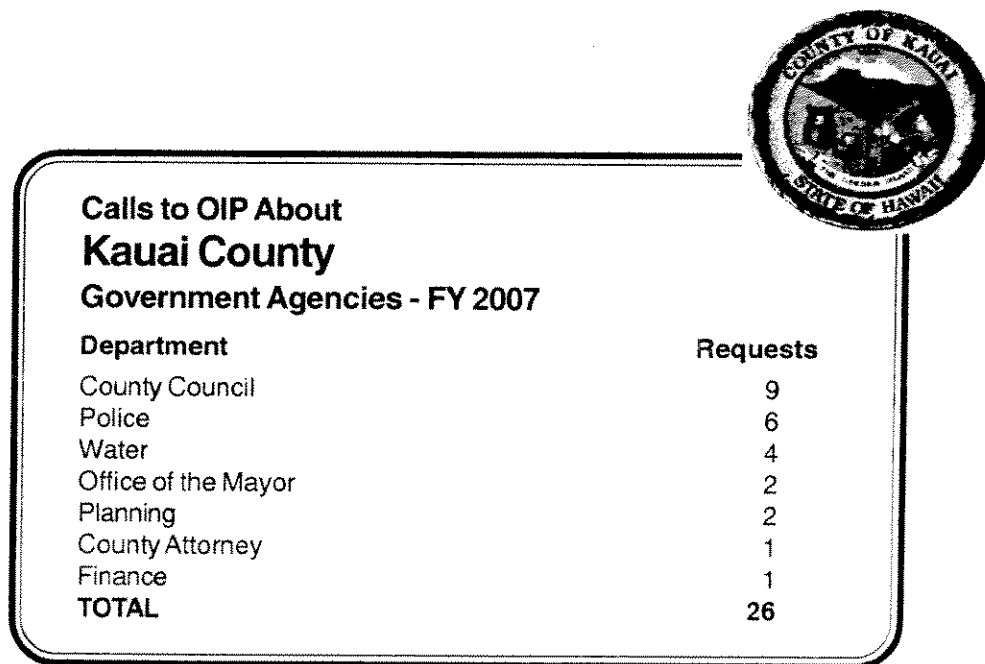
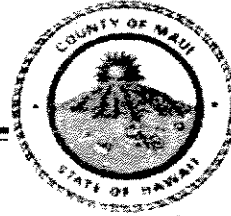


Figure 10



**Calls to OIP About
Maui County
Government Agencies - FY 2007**

Department	Requests
County Council	13
Corporation Counsel	4
Planning	3
Police	2
Economic Development	2
Finance	1
Office of the Mayor	1
TOTAL	26

Figure 11

Requests for Assistance

In FY 2007, OIP received 62 formal requests for assistance from the public. OIP is generally asked by a member of the public for help in obtaining a response from an agency to a record request.

OIP staff attorneys will in these cases generally contact the agency to determine the status of the request, direct and instruct the agency as to the proper response required, and in some instances, will attempt to facilitate disclosure of the records.

OIP issues memorandum opinions where an issue raised has already been addressed in a prior formal opinion or where the opinion has limited application. Memorandum opinions are sent to the parties involved and are maintained as public records at OIP. Summaries of some of the memorandum opinions issued in FY 2007 are found in this report beginning on page 20.

Requests for Legal Opinions

Upon request, OIP provides written advisory opinions on issues under the UIPA and the Sunshine Law and determinations on UIPA appeals. In FY 2007, OIP received 47 requests for advisory opinions and UIPA appeals.

OIP issues a formal opinion letter, which is published and distributed, where a question raised has broad application and will provide useful guidance on the interpretation and application of the UIPA or the Sunshine Law. These formal opinion letters are distributed to:

- State and county agencies and boards
- WestLaw
- Michie, for annotation of the Hawaii Revised Statutes
- Persons or entities on OIP's mailing list

These formal opinions are also available on OIP's website at www.hawaii.gov/oip. OIP also publishes summaries of the formal opinions in OIP's monthly newsletter, *OpenLine*, and on OIP's website. The website also contains an index for the formal opinions and provides for word searches. Summaries of the formal opinions issued in FY 2007 are found in this report beginning on page 23.

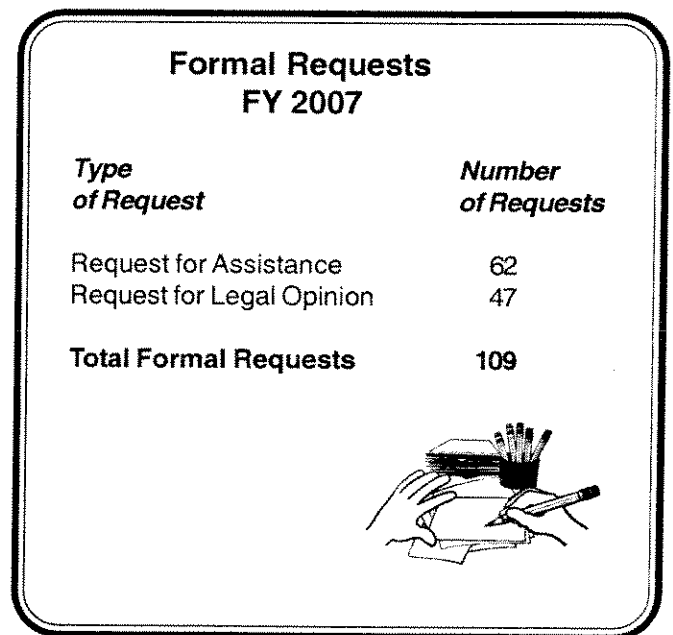


Figure 12

Sunshine Law Report

OIP was given responsibility for administration of the Sunshine Law in 1998. Since that time, OIP has seen a large increase in the number of requests. The annual number of requests increased from 323 in FY 2006 to 332 in FY 2007. See **Figure 13**.

Of the 772 AOD requests made in FY 2007, 281 involved the Sunshine Law and its application. OIP also opened 51 case files in response to written requests for opinions or investigations regarding the Sunshine Law. See **Figure 14**.

The rise in requests in recent years appears to be due in large part to a heightened awareness by both the public and government boards of the Sunshine Law's requirements as well as more diligent efforts by boards to comply with those requirements, both of which result in greater use of OIP as a resource.

OIP continues to provide an annual training to newly appointed board and commission members and

their staff, as well as providing other training sessions throughout the year. See page 36 for a list of the sessions provided in FY 2007.

Sunshine Law Inquiries

<i>Fiscal Year</i>	<i>AOD Inquiries</i>	<i>Formal Requests</i>	<i>Total</i>
2007	281	51	332
2006	271	52	323
2005	185	38	223
2004	209	17	226
2003	149	28	177
2002	84	8	92
2001	61	15	76
2000	57	10	67

Figure 14

Sunshine Law Inquiries

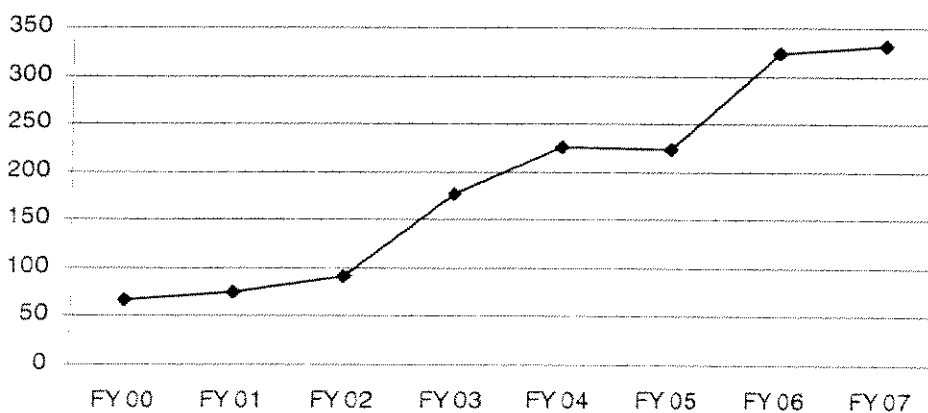


Figure 13

Case and Opinion Letter Summaries

The following summaries exemplify the type of legal assistance provided by OIP's staff attorneys through the AOD service, through memorandum opinions, and through formal opinions. Summaries of the formal opinions begin on page 23.

Closed Meeting to Negotiate Property Acquisition

A board was negotiating the sale of a parcel of land to another entity and wanted to hold a closed meeting to discuss the negotiations. The board called OIP's AOD service and asked whether section 92-5(a)(3), HRS, permitted it to hold a closed session when it was the prospective seller rather than the prospective buyer.

OIP advised that since section 92-5(a)(3) doesn't specify who must be the acquiring party it would be reasonable to read that section to allow a closed meeting where a board is the seller. In the absence of any OIP or court opinion holding otherwise, the board could in good faith hold a closed meeting based on that interpretation.

Certification of Documents for a UIPA Requester

A record requester involved in litigation with a state agency asked the agency to certify copies of the documents the agency provided under the UIPA so the documents could be used in the litigation. OIP advised that the UIPA doesn't require an agency to provide certified copies in response to a UIPA request. Discovery and the UIPA are separate and distinct mechanisms for obtaining records.

Board Member E-mail on a Personal Computer

A board received a request for all e-mail between its executive director and the board members. One board member used a personal computer to receive board e-mail. The board asked OIP whether the board e-mail on that computer was a government record subject to the UIPA.

OIP advised that the issue was whether the board had administrative control over the stored board e-mail. In that case, because it was the personal computer of a current board member, the board did appear to have the ability to get the e-mail, and thus had administrative control. If it were a former board member, the board would not have been able to obtain the stored e-mail if the former member was unwilling to provide it, so the board would not have had administrative control and the stored e-mail would not have been subject to the UIPA.

Financial Information of a Public Company

An agency received a request for a winning vendor's proposal, which included financial information in the form of an excerpt from a prospectus prepared for an initial public offering and a filing with the Securities Exchange Commission. The agency asked OIP whether the financial details could be withheld as confidential business information.

OIP advised that although detailed financial information of the sort found in an SEC filing or

a prospectus might well be confidential business information for a private company, for a public company that information had already been made public (through filing it with the SEC, among other ways) so there was no basis to withhold it.

Dealing With Would-be Testifiers When a Meeting Lacks Quorum

A board asked whether, when a noticed meeting was canceled for lack of a quorum, a board member could stay to listen to members of the public who had made the effort to come to the meeting and wanted to make comments.

OIP advised that there would generally be no Sunshine Law problem with a single board member talking to members of the public. However, when a scheduled meeting was canceled, the board should take care to make it clear to members of the public who still wish to make comments that speaking to a lone board member is not “testimony” in the formal sense. Although that board member can pass the comments on at the next meeting, they will not be recorded in minutes as testimony presented at a board meeting because the comments are not being made at a board meeting.

Electrical Outage Prevents Oral Testimony

When an electrical outage caused persons to be detained in an elevator and prevented them from presenting oral testimony on an agenda item at a Maui County Council meeting, the Council questioned whether it is required by the Sunshine Law to await the oral testimony from those detained persons before making a decision on the agenda item. Although the Sunshine Law gives persons the right to present oral testimony, this right is not absolute and a board is not required to accommodate persons who are unable to be physically present to offer oral testimony at the time when the board calls for oral testimony.

Draft Agreement and Correspondence between Board and Developer

A group opposed to the construction of a hotel on Kauai sought correspondence between the hotel’s developer and Kauai’s Board of Water Supply concerning the availability of water for the hotel. There are no exceptions to disclosure that would allow the Board to withhold from public disclosure its correspondence with the developer including a draft agreement that had not been finalized.

Discussions on Finished Report Not Subject to Sunshine Law

The Tax Review Commission (“TRC”) prepared its Report to the Legislature setting forth its findings and recommendations about the State’s tax system. The Legislature scheduled an informational briefing on the TRC’s Report and the TRC inquired whether its members’ attendance and participation at the briefing must comply with the Sunshine Law’s open meeting requirements. After the TRC’s completion of its report, this item no longer constituted the TRC’s “official business” since it ceased to be a matter pending, or likely to arise in the foreseeable future, before the current TRC. Therefore, the TRC may discuss its Report at the briefing without complying with the Sunshine Law’s open meeting requirements.

Reports on Civil Service Classification Actions

The Department of Health ("DOH") is not required to disclose to the union the reports prepared by a classifier about classification of civil service positions ("Reports") under the UIPA's "frustration of a legitimate government function" exception. The Reports contain the classifier's observations, selection of key facts, recommendations and analyses that are predecisional and deliberative, and disclosure of the Reports would frustrate the DOH's decision-making in classifying civil service positions. Position descriptions, organizational charts and other factual information attached to the Reports and already made public by DOH are not exempt from required disclosure. The union's particular need or reason for its records request is not a factor in analyzing whether access is required under the UIPA.

RICO Investigative Records

A complainant sought access to records of the Regulated Industries Complaints Office (RICO), Department of Commerce and Consumer Affairs, about its investigation of the complaint filed against an individual who was contracted by a homeowners association to provide maintenance services (contractor). The UIPA requires RICO to disclose the contract between the contractor and homeowners association, but RICO may redact the contractor's name from the contract and other records identifying the contractor because this information falls under the UIPA's "clearly unwarranted invasion of personal privacy" exception. RICO is not required to disclose the name of an attorney contacted by RICO's investigator in the investigation because RICO expressly promised to keep the attorney's identity confidential and thus this information falls within the UIPA's "frustration of a legitimate government function" exception.

Attorney General Opinion

At the request of the Board of Land and Natural Resources ("BLNR"), the Department of the Attorney General rendered an advisory opinion concerning the disposition of recreational residence leases at two state parks ("AG opinion"). The State Parks Division ("Division") of the Department of Land and Natural Resources made recommendations to the BLNR about the leases and expressly referenced the AG opinion as the basis for its recommendation. The AG opinion falls within the attorney-client privilege and is not required to be disclosed under the exceptions in section 92F-13(3) and (4), HRS. The Division's reference to the AG opinion did not disclose the Attorney General's analysis and thus did not waive the attorney-client privilege.

OIP Formal Opinion Summaries

OIP has issued 322 formal advisory opinions from 1989 through the end of June 2007. In Fiscal Year 2007, OIP issued 13 formal opinions.

The following summarizes these formal opinions. The summaries should be used only as a broad reference guide. To fully understand an opinion, it is necessary to read the full text of the opinion. Summaries and the full text of all opinions are available at www.hawaii.gov/oip.

UIPA:

Firearm Permits

In response to an inquiry from the Honolulu Police Department ("HPD"), OIP concluded that firearm permit information that identifies an individual permit holder by name or address must be deemed to be "registration data" protected under § 134-3(b), HRS, and therefore should be withheld under § 92F-13(4), HRS, of the UIPA. Other permit information that could reasonably identify the individual permit holder (such as the individual's social security number, fingerprints, and photograph) should also be segregated and withheld under the UIPA's frustration exception (§ 92F-13(3)) to maintain the confidentiality of the individual's identity.

OIP concluded that, under the UIPA's privacy exception (§ 92F-13(1)), HPD may generally withhold information that allows the identification of individuals who have been denied permits, as well as those who did not apply for a permit, who did not complete the application process, or who were granted a permit, but allowed it to lapse without acquiring a firearm. OIP noted, however, that circumstances may alter the usual balance

between the individual's privacy interests and the public interest in disclosure, such as the Uyesugi case.

In both of the above categories, once identifying information is properly redacted, HPD must disclose the remaining information in an application or application file unless it falls within another exception to disclosure. [Op. Ltr. No. 07-01].

Police Blotter

The Kauai Police Department asked whether it could redact from its Daily Arrest Log, commonly referred to as the police blotter, the names of individuals who were arrested and either released without charges being filed or released pending further investigation.

OIP reiterated its prior holding that police blotter information concerning adult offenders must be made publicly available upon request, even where the arrestee was released without charges being filed or released pending further investigation, noting that it is the overwhelming public interest in how the executive branch of government exercises the arrest power that is dispositive, not the particular circumstances of whether an arrestee is subsequently determined to be innocent or whether law enforcement might find it useful to conceal a potential informant's arrest. [Op. Ltr. No. 07-4].

Energy Infrastructure Security

The Department of Business, Economic Development & Tourism asked whether it was required to disclose sensitive information reported to it by energy companies regarding the physical security of Hawaii's critical energy infrastructure. OIP opined that where an agency seeks to withhold information in the interest of public security, the agency must show that public disclosure of the information could reasonably be expected to cause damage to public security. [Op. Ltr. No. 07-5].

Personal Records and Vital Information in Land Records

Requester sought guidance on disclosure under the UIPA of personal information and vital records included in the land records of the Department of Land and Natural Resources, Land Division ("DLNR"). OIP advised DLNR as follows:

Personal information contained in DLNR's land records that carry a significant privacy interest, such as social security numbers, home addresses and telephone numbers, ethnicity, and dates of birth, may generally be redacted under the UIPA's privacy exception. Generally, there is no public interest in disclosure of this type of information that would outweigh that privacy interest.

Certain other records or information in which individuals may have a significant privacy interest must be disclosed, however, where those records or information shed light on DLNR's functions, such as its duty of ensuring the genealogy of land owners and transferees. [Op. Ltr. No. 07-07].

Personal Information in Agency's Response to Audit

The state auditor asked whether the Office of the Auditor (the "Auditor") could redact from an agency's response to an audit individually identifiable employee misconduct information about an audit analyst. OIP found that the misconduct information directly impacted on the performance of the Auditor in its audit of the agency and its overall functioning.

OIP opined that the Auditor cannot redact this information under the UIPA's privacy exception because the public interest in the information, which directly sheds light on the performance of the Auditor, outweighs any privacy interest the

Analyst may have in the information. Thus, in response to a UIPA request, OIP concluded that the Auditor must provide a copy of the agency's response without redaction. [Op. Ltr. No. 07-08].

Ethics Advisory

The Ethics Commission, City and County of Honolulu, asked whether the UIPA required public disclosure of the Commission's advisory opinion identifying an employee who the Commission concluded had violated ethics laws, where the employee was not suspended or discharged from employment for that misconduct.

OIP concluded that although the employee retained a significant privacy interest in records or information relating to the misconduct in question because the employee was not suspended or terminated, the employee's privacy interest was diminished by the Commission's determination that the employee had engaged in misconduct warranting suspension. Further, the employing department's handling of the matter by instituting lesser discipline while the Commission was still investigating heightened the public interest. Thus the public interest in information about the employee's misconduct (including the employee's identity) outweighed the employee's privacy interest in this case and required disclosure of the advisory opinion in full. [Op. Ltr. No. 07-09].

SUNSHINE LAW:

Sufficiency of Agenda

Several persons asked whether broad language included in all of the Hawaii County Council's agendas provided sufficient notice under the Sunshine Law to allow the Council to consider and decide motions to reconsider final action taken on two legislative bills.

OIP concluded that the language, which generally noticed the possibility of reconsideration motions, did not provide sufficient notice to allow the Council's substantive discussion, deliberation and decision on the motions to reconsider. OIP found that the Sunshine Law required the Council to specifically list the bills subject to the motions to reconsider. [Op. Ltr. No. 07-02].

Public Testimony

A Honolulu Council member asked whether the Council must accept oral testimony on: (1) an agenda item that has been cancelled, and (2) an agenda item which the Council considers but then postpones for later consideration.

OIP opined that the Council is not required to accept oral testimony on an agenda item that is cancelled before the Council considers it. Where the Council begins consideration but defers further action to another meeting or indefinitely, the Council must accept oral testimony on such item. [Op. Ltr. No. 07-03].

Public Testimony

Requester sought an advisory opinion on whether the Maui County Salary Commission provided sufficient notice under the Sunshine Law to allow its action to approve proposed salaries for certain Maui County officers set forth in the Commission's revised comprehensive salary model. The specific question presented was whether the Commission could properly take action on an agenda item listed where the Agenda did not expressly indicate that a decision would be made on that item or the nature of the decision.

OIP found that the Commission's agenda provided sufficient notice of the subject matter of the item to allow the Commission's action to approve an issue arising directly under the item listed.

An agenda must provide notice of the matters that the Commission intends to consider at its meeting by listing the matters with enough detail to reasonably allow the public to understand the subject of the matter to be considered. The agenda does not need to specifically notice that a decision may be made on an item or the exact nature of that decision as long as it reasonably arises under the subject matter listed. [Op. Ltr. No. 07-06].

Right to Present Testimony

A requester sought an opinion as to whether the Maui Planning Commission violated the Sunshine Law by denying a member of the public the right to testify during the meeting. The Commission had restricted testimony from a member of the public to the subject matter the Commission had intended the agenda item to cover even though the testifier believed the proffered testimony fell within the subject matter as listed on the filed agenda.

OIP opined that the Commission had violated the Sunshine Law, although the violation was not intentional. A board can require that testimony be related to the agenda item, but it must interpret the agenda item broadly for the purpose of determining whether testimony is related to the agenda item. A board may not restrict the public from testifying on issues that fall within the general subject matter of an agenda item, and the scope of an agenda item is determined by the language used on the filed agenda, not the board's intent as to the meaning of the agenda item. [Op. Ltr. No. 07-10].

Amendment of Agenda; Executive Meeting Agenda

OIP opined that section 92-7(d) of the Sunshine Law did not allow amendment of the Hawaii County Council's meeting agenda to consult with its Corporation Counsel in executive session regarding issues related to settlement of a pending case brought against the County and other parties, commonly referred to as the "Hokulia lawsuit."

An agenda may not be amended to add an item if it is of reasonably major importance and action on the item will affect a significant number of persons. Haw. Rev. Stat. § 92-7(d) (Supp. 2005).

An opinion was also sought on whether the Sunshine Law allows a board to place a generic entry of "executive session" on all of its agendas without identifying the subject matter of the executive meeting. OIP opined that the Sunshine Law does not allow the use of generic "executive session" entries on an agenda to allow a board to consider an undisclosed matter in an executive meeting. [Op. Ltr. No. 06-05].

Meeting Notice Filing Requirement

An advisory opinion was sought as to whether the Sunshine Law allows the filing of a meeting notice with the office of the lieutenant governor (for state boards) or the appropriate county clerk's office (for county boards) after normal business hours on the sixth day prior to the meeting for which the notice is being filed. OIP found that because a calendar day under the Sunshine Law should be construed to extend until midnight, the statute allows a meeting notice to be filed until midnight on the sixth calendar day prior to the meeting for which it is being filed. [Op. Ltr. No. 06-06].

Executive Meeting Minutes Re: Employee Evaluation

After the Board of Education ("BOE") denied separate requests to access portions of BOE's executive meeting minutes ("the Minutes") related to the evaluation of Dr. James Shon, then Executive Director of the Charter School Administrative Office and the audiotape of the meeting, requesters appealed that denial to OIP.

OIP determined that BOE must disclose portions of the Minutes and the audiotape recording reflecting the motions voted on regarding Dr. Shon's retention as well as the votes cast by the individual BOE members on those motions. Disclosure of these portions would not defeat the executive meeting's lawful purpose of protecting the privacy interests of Dr. Shon. [Op. Ltr. No. 06-07].

Legislation

One of OIP's functions is to make recommendations for legislative change to the UIPA and the Sunshine Law to clarify areas that have created confusion in application or to amend provisions that work counter to the legislative mandate of open government. OIP also provides assistance to government agencies, government boards, elected officials and the public in the drafting of proposed bills.

To provide for uniform legislation in the area of government information practices, OIP also monitors and testifies on proposed legislation that may impact the UIPA; the government's practices in the collection, use, maintenance, and dissemination of information; and government boards' open meetings practices.

This past legislative session, OIP monitored and tracked 130 pieces of legislation.

OIP also introduced the following 6 bills to the legislature.

HB1392/SB1478 - These companion bills sought to amend the Sunshine Law to give OIP the ability to render decisions under the Sunshine Law, to make board compliance with those decisions mandatory, and to allow OIP to obtain court enforcement of its decisions, if necessary.

Status: Both bills failed to crossover.

HB1393/SB1479 - These bills sought to amend the UIPA to allow agencies to withhold home addresses contained in (1) certified payroll records on public works contracts; and (2) contracts for contract hires and consultants employed by agencies.

Status: HB1393 was signed into law as Act 14.

HB1394/SB1480 - These bills sought to amend the Sunshine Law to allow any number of members of a board to discuss the selection of board officers or assignment of members to committees outside of a public meeting.

Status: Both bills failed to crossover.



Agency Public Reports

The UIPA requires all state and county agencies to "compile a public report describing the records it routinely uses or maintains using forms prescribed by the office of information practices." Haw. Rev. Stat. § 92F-18(b) (1993).

These public reports are filed with OIP and must be reviewed and updated annually by the agencies. OIP is directed to make these reports available for public inspection.

The Records Report System

OIP developed the Records Report System ("RRS"), a computer database, to facilitate

collection of information from agencies and to serve as a repository for all agency public reports.

From 1994, when the first record report was added to the system, up to June 30, 2007, state and county agencies have reported 30,481 records. See **Figure 15**.

Records Report System	
Status of Records Reported by Agencies: 2007 Update	
Jurisdiction	Number of Records
State Executive Agencies	20,886
Legislature	256
Judiciary	1,645
City and County of Honolulu	3,867
County of Hawaii	2,255
County of Kauai	930
County of Maui	642
Total Records	30,481

Figure 15

RRS on the Internet

The RRS was first developed as a Wang computer-based system. In 2003, the RRS was transferred to the Internet, creating a system accessible to both government agencies and the public.

Beginning in October 2004, the RRS has been accessible on the Internet through OIP's website. Agencies may access the system directly to enter and update their records data. Agencies and the public may access the system to view the data and to create various reports. A guide on how to retrieve information and how to create reports is also available on OIP's website.

Key Information: What's Public

The RRS requires agencies to enter, among other things, public access classifications for their records and to designate the agency official having control over each record. When a government agency receives a request for a record, it can use the RRS to make an initial determination as to public access to the record.

State executive agencies have reported 10,652 (51%) of their records as accessible to the public in their entirety; 3,760 (18%) as unconditionally confidential, with no public access permitted; and 5,430 (26%) in the category "confidential/conditional access." 1,044 (5%) are reported as undetermined. See **Figure 16**. In most cases, OIP has not reviewed the access classifications.

Records in the "confidential/conditional access" category are accessible after the segregation of confidential information, or accessible only to those persons, or under those conditions, described by specific statutes.

**Access Classifications
of Records Reported by
State Executive Agencies**

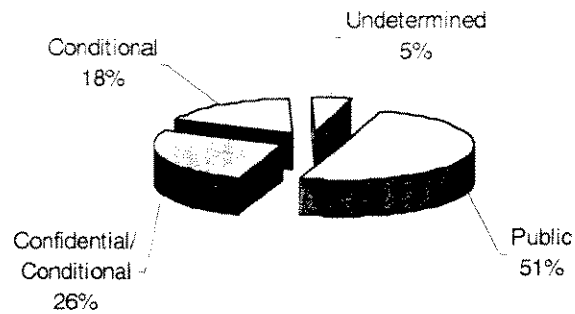
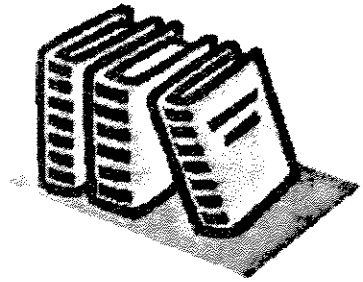


Figure 16

The RRS only lists government records and information and describes their accessibility. It does not contain the actual records. Accordingly, the record reports contain no confidential information and are public in their entirety.

Publications and Website

OIP's publications and website play a vital role in the agency's ongoing efforts to inform the public and government agencies and boards about the UIPA, the Sunshine Law, and the work of OIP.

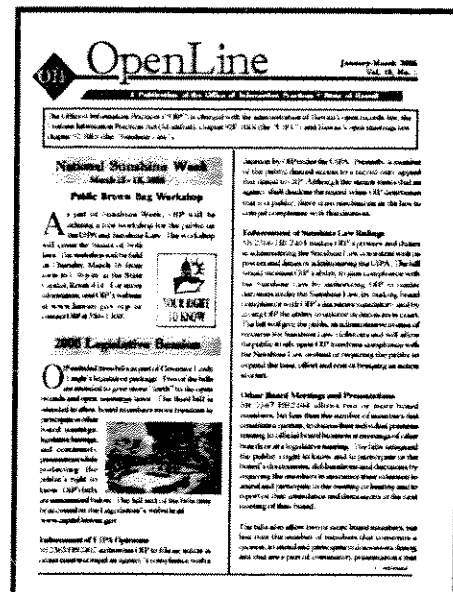


In FY 2007, OIP continued its traditional print publications, including its *OpenLine* newsletter, *Office of Information Practices Annual Report 2006*, Guide to Open Meetings, and a guide book called "Hawaii's Open Records Law" intended primarily to provide the non-lawyer agency official with an overall understanding of the UIPA and a step-by-step guide for application of the law. OIP's publications are available on OIP's website.

OpenLine

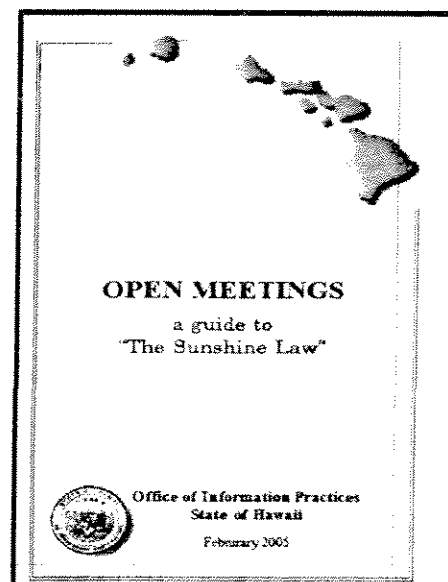
The *OpenLine* newsletter, which originated in March 1989, has always played a major role in OIP's educational efforts. The newsletter is sent to all state and county agencies, boards and commissions, and libraries throughout the State, as well as all other persons requesting the newsletter. This past year, OIP distributed over 3,500 copies of each issue of the *OpenLine* and also provided e-mail notification to those who prefer receiving the publication in electronic form.

Current and past issues of the *OpenLine* are also available on OIP's website. FY 2007 issues included summaries of recently published OIP opinions as well as information about OIP's legislative proposals, National Sunshine Week, and other issues relevant to OIP's mission.



Sunshine Law Guide

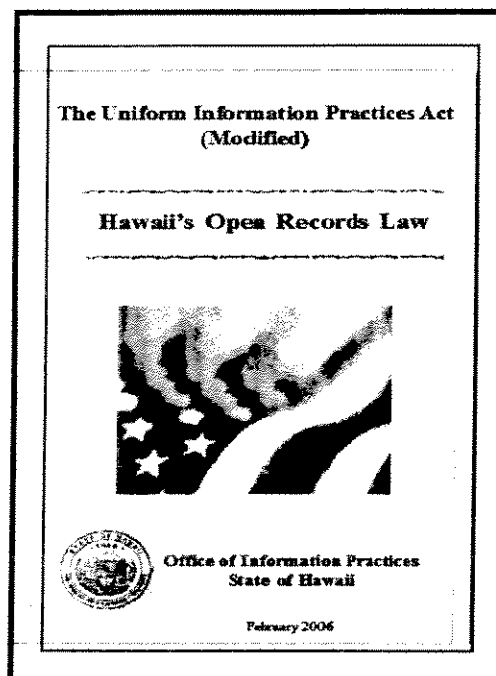
Open Meetings is a 64-page guide to the Sunshine Law intended primarily to assist board members in understanding and navigating the Sunshine Law. The guide uses a question and answer format to provide general information about the law and covers such topics as meeting requirements, permitted interactions, notice and agenda requirements, minutes, and the role of OIP.



The guide also includes the full text of the Sunshine Law; the Sunshine Law Public Meeting Notice Checklist; an Executive Meetings Flowchart; summaries of OIP opinion letters related to the Sunshine Law; and the form Request for Attorney General's Concurrence for Emergency Meeting.

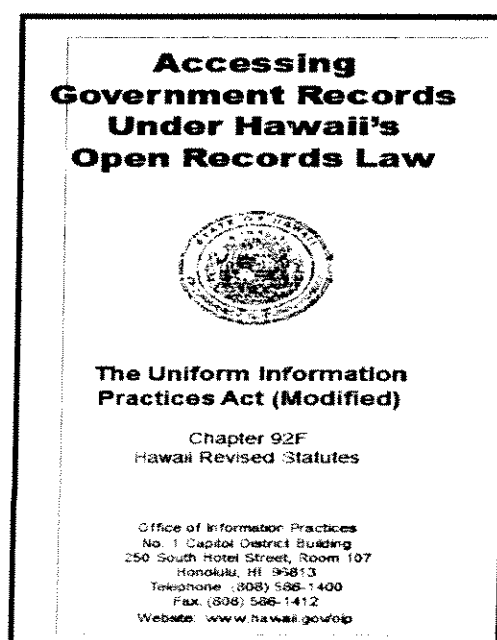
UIPA Guide

Hawaii's Open Records Law is a 36-page guide to the Uniform Information Practices Act and OIP's administrative rules. The guide directs agencies through the process of responding to a record request, including determining whether the record falls under the UIPA, providing the required response to the request, analyzing whether any of the exceptions to disclosure apply, and suggesting how the agency review and segregate the record. The guide also includes answers to a number of frequently asked questions.



Accessing Government Records Under Hawaii's Open Records Law

This three-fold pamphlet is intended to provide the public with basic information about the UIPA. It explains how to make a record request, the amount of time an agency has to respond to that request, what types of records or information can be withheld and any fees that can be charged for search, review, and segregation. The pamphlet also discusses what options are available for appeal if an agency should deny a request.



Model Forms

OIP has created model forms for use by agencies and the public.

To assist members of the public in making a records request to an agency that provides all of the basic information the agency requires to respond to the request, OIP provides a **“Request to Access a Government Record”** form. To follow the procedures set forth in OIP’s rules for responding to record requests, agencies may use OIP’s model form **“Notice to Requester”** or, where extenuating circumstances are present, the **“Acknowledgment to Requester”** form.

Members of the public may use the **“Request for Assistance to the Office of Information Practices”** form where their request for government records has been denied by an agency or to request other assistance from OIP.

To assist agencies in complying with the Sunshine Law, OIP provides a **“Public Meeting Notice Checklist.”**

All of these forms may be obtained online at www.hawaii.gov/oip.

OIP Website

OIP’s website has become an important means of disseminating information. The site plays a major role in educating and informing government agencies and citizens about access to state and county government records and meetings.

Visitors to the site can access, among other things, the following information and materials:

- The UIPA and the Sunshine Law statutes
- OIP’s administrative rules

- *OpenLine* newsletters
- OIP’s recent annual reports
- Model forms created by OIP
- OIP’s formal opinion letters
- Formal opinion letter summaries
- Formal opinion letter subject index
- General guidance for commonly asked questions

OIP’s website also serves as a gateway to websites on public records, privacy, and informational practices in Hawaii, other states, and the international community.

Features

OIP’s website features the following sections that may be accessed through a menu located on the left margin.

“Laws/ Rules/ Opinions”

This section features three sections:

- *Laws*: the complete text of the UIPA and the Sunshine Law, with quick links to each section. With an Internet browser, a user can perform a key word search of the law.
- *Rules*: the full text of OIP’s administrative rules (“Agency Procedures and Fees for Processing Government Record Requests”), along with a quick guide to the rules and OIP’s impact statement for the rules.
- *Opinions*: a chronological list of all OIP opinion letters, an updated subject index, a summary of each letter, and the full text of each letter.

“Forms”

Visitors can view and print the model forms created by OIP to facilitate access under and compliance with the UIPA and the Sunshine Law.

"OpenLine/ Guidance"

The monthly *OpenLine* newsletter is available online. Back issues, beginning with the November 1997 newsletter, are archived here and easily accessed. Online guidance includes answers to frequently asked questions from government agencies and boards and from members of the public.

"Reports"

OIP's annual reports are available here for viewing and printing, beginning with the annual report for FY 2000. Other reports available include reports to the Legislature on the commercial use of personal information and on medical privacy. Viewers may also read about, and link to, the Records Report System.

"Related Links"

To expand your search, visit the growing page of links to related sites concerning freedom of information and privacy protection.

"Search"

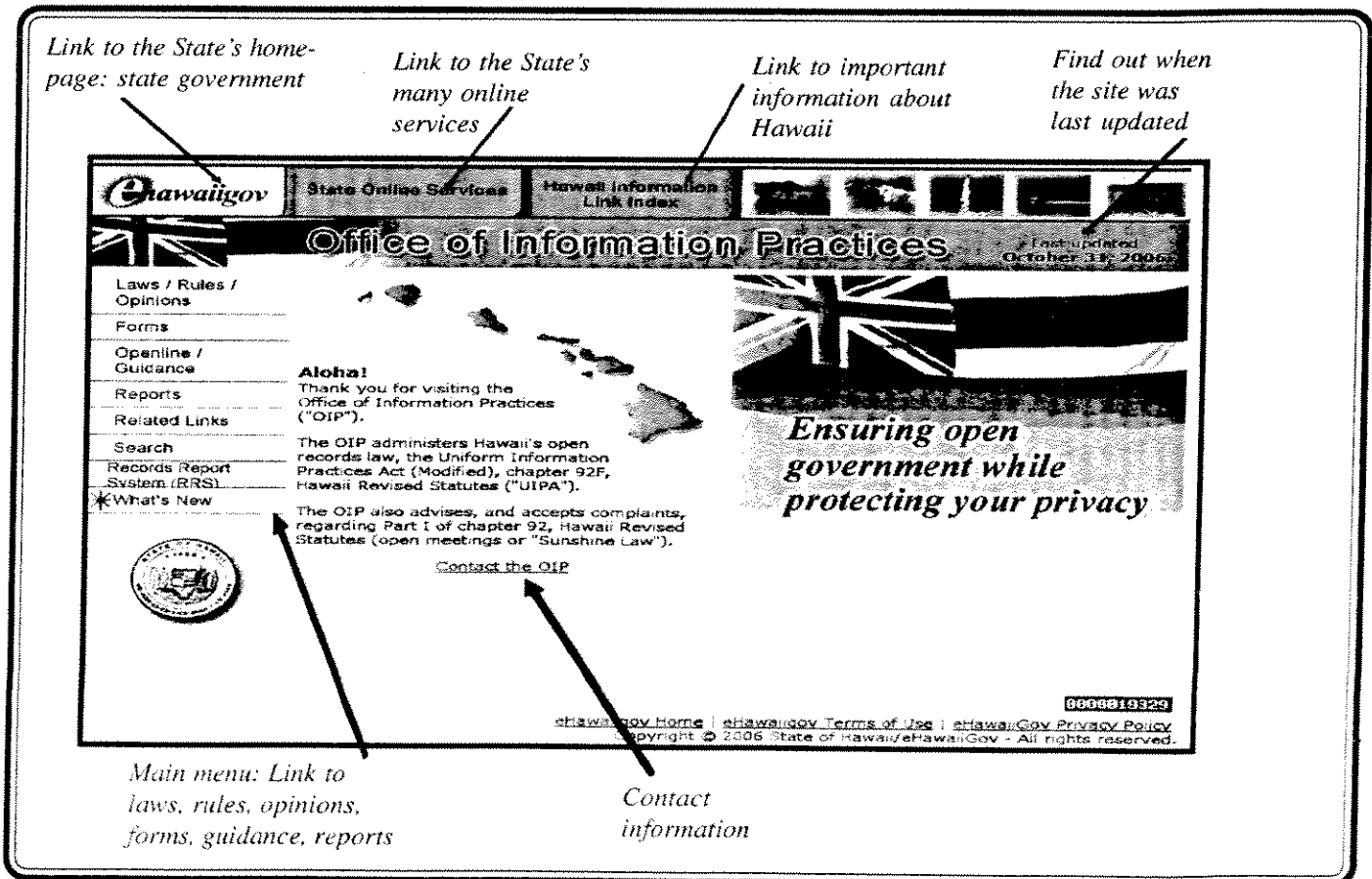
Convenient search engine to search OIP's website. Enter your search terms, phrases, OIP opinion letter number or subject matter in the box provided. A listing of relevant hits will display along with the date the page or document was modified as well as a brief description of the material.

"Records Report System (RRS)"

Shortcut link to the Records Report System online database.

"What's New"

Lists current events and happenings at OIP.



Training in FY 2007

Each year, OIP makes presentations and provides training on the UIPA and the Sunshine Law. OIP conducts this outreach effort as part of its mission to inform the public of its rights and to assist government agencies in understanding and complying with the UIPA and the Sunshine Law.



OIP conducted 33 training workshops in FY 2007. These trainings included various workshops for the general public, neighborhood board members, and various state agencies. In addition, during Sunshine Week in March, OIP hosted a Honolulu Advertiser sponsored workshop to inform the public about the Sunshine Law. The following is a listing of the workshops and training sessions OIP conducted during FY 2007.

UIPA Training

OIP provided training sessions on the UIPA for the following agencies and groups:

- 08/24/06 - UH Alumni Assn
- 09/15/06 - Hawaii County Council
- 10/27/06 - Public Workshop
- 11/09/06 - DOE-Labor Relations Section
- 11/28/06 - DOE-Labor Relations Section
- 1/04/2007 - Identity Theft Task Force
- 3/07/2007 - Honolulu Advertiser (Sunshine Week)
- 3/15/2007 - Public Workshop (Sunshine Week)
- 3/17/2007 - HNL-Media Council (Sunshine Week)
- 4/25/2007 - American Judicature Society
- 5/14/07 - HI County Clerks Office
- 5/30/07 - DLNR-Land Division

Sunshine Training

OIP provided training sessions on the Sunshine Law for the following agencies and groups:

- 08/15/06 - DBEDT/NELHA
- 08/24/06 - UH Alumni Assn
- 09/15/06 - Hawaii County Council
- 09/17/06 - Honolulu City & County Boards
- 09/20/06 - DLNR-Kaho'olawe Reserve Commission
- 09/29/06 - Identity Theft Task Force
- 10/11/06 - Honolulu City & County Boards
- 10/12/06 - HDS-HI Housing Finance & Development Corp
- 10/20/2006 - City Council-Transit Advisory Task Force
- 10/25/2006 - General Workshop for the public
- 12/04/2006 - Neighborhood Board Task Force
- 2/07/2007 - Hawaii County Council
- 2/26/2007 - OHA-Hawaiian Historic Preservations Council
- 3/07/2007 - Honolulu Advertiser (Sunshine Week)
- 3/15/2007 - Public Workshop (Sunshine Week)
- 3/16/2007 - OHA-Advisory Commission (Bioprospecting)
- 3/17/2007 - HNL-Media Council (Sunshine Week)
- 04/02/07 - DAGS-Access HI Committee
- 05/07/07 - DLNR-Legacy Land Conversion Committee
- 06/02/07 - City Council-Neighborhood Commission Office